

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) ACT 1988

AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) REGULATIONS (AMENDMENT)

1987 No. 87

Section 2 of the Australian Capital Territory (Self-Government) Act 1988 (the Act) provides that the provisions of the Act (other than sections 1 and 2) shall come into operation on a day or days to be fixed by Proclamation. Certain provisions of the Act (and in particular sections 23 and 27) have not been proclaimed to commence. Before fixing a commencement date for these provisions under section 2, it is necessary to make regulations under the Act to enable the Act to operate effectively.

Section 74 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 23(1) of the Act specifies certain matters excluded from the legislative power of the Australian Capital Territory (ACT) Legislative Assembly. Subsection 23(2) allows the making of regulations to omit or reduce the scope of excluded matters.

Section 27 of the Act provides that an Assembly law does not bind the Crown in right of the Commonwealth except as provided by the regulations.

The proposed Australian Capital Territory (Self-Government) Regulations (Amendment) [the Amendment Regulations] are being made under subsection 4(1) of the Acts Interpretation Act 1901 which provides that where an Act that is not to come into operation immediately upon its enactment is expressed to confer power to make an instrument of a legislative character (including regulations) then, unless the contrary intention appears, the power may be exercised, and anything may be done for the purpose of enabling the exercise of the power or of bringing the instrument into effect, before the Act comes into operation as if it had come into operation.

The Amendment Regulations will come into operation on the same day as the Act comes into operation, in accordance with subsection 4(2) of the Acts Interpretation Act 1901 which provides, inter alia, that an instrument made by virtue of subsection 4(1) of the Acts Interpretation Act 1901 takes effect on the day on which the Act concerned comes into operation.

The purpose of the Regulations is to:

- (a) enable the ACT Legislative Assembly to make laws in relation to the establishment and practice of an ACT government solicitor and in relation to incorporated associations, co-operative societies and trustee companies;
- (b) reflect the fact that after 1 July 1990 the ACT Legislative Assembly will be able to make laws generally in relation to the admission of persons to practice as legal practitioners and the regulation of the practice of persons so admitted; and
- (c) list those ACT laws which will bind the Crown in right of the Commonwealth.

The details of the Amendment Regulations are as follows.

Regulation 1 provides for the commencement of subregulation 3(2) of the Regulations (the effect of which is described below).

Regulation 2 provides that in the Regulations 'Principal Regulations' means the Australian Capital Territory (Self-Government) Regulations.

Subregulation 3(1) provides for the insertion of the following regulations after regulation 3 of the Principal Regulations.

Paragraph 23(1)(f) of the Act has the effect that the ACT Legislative Assembly cannot make laws with respect to the admission of persons to practice as legal practitioners and the regulation of the practice of persons so admitted. New subregulation 3A(1) excludes from paragraph 23(1)(f) laws with respect to the establishment of, and regulation of the practice of, a government solicitor for the Territory, the admission of persons to practice as legal practitioners for or on behalf of the government solicitor and the regulation of the practice of such persons.

Paragraph 23(1)(h) of the Act has the effect that the ACT Legislative Assembly cannot make laws with respect to companies and the acquisition of shares in bodies corporate. New subregulation 3A(2) excludes from paragraph 23(1)(h) laws with respect to incorporated associations, co-operative societies and trustee companies, including the acquisition of shares in, and winding up of, these bodies.

New subregulation 3B provides that, for the purposes of section 27 of the Act, the Crown in right of the Commonwealth is bound in relation to an enactment listed in the Schedule to the extent that the enactment:

- is expressed wholly or partly to bind the Crown or to apply to any act, matter or thing affecting the Crown or the Commonwealth; or

- provides that any act, matter or thing done under the enactment binds the Crown.

Subregulation 3(2) amends Regulation 3A of the Principal Regulations to omit paragraph 23(1)(f) of the Act with effect from 1 July 1990.

Regulation 4 amends the Principal Regulations by adding at the end a Schedule which lists the enactments binding the Crown in right of the Commonwealth.

ISSUED UNDER THE AUTHORITY OF
THE MINISTER FOR THE ARTS AND
TERRITORIES